

E-FILED - 9/30/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAAC NICHOLAS,)	No. C 08-4082 RMW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND; ORDER
vs.)	DENYING APPOINTMENT OF
)	COUNSEL
)	
DEPARTMENT OF CORRECTIONS, et)	
al.,)	(Docket No. 4)
)	
Respondents.)	

Petitioner, a state prisoner proceeding pro se, filed a "Notice of Appeal" from a final judgment issued by the Supreme Court of California on August 13, 2008. However, it is unclear exactly what petitioner is challenging. Petitioner makes mention of a California statute regarding the transfer of prisoners to other facilities, however, the court cannot fairly evaluate the petition in its present state, nor can the court be certain that petitioner intended to file a 28 U.S.C. § 2254 petition at all.

Accordingly, the court will dismiss the petition with leave to amend and allow petitioner an opportunity to file either a proper 28 U.S.C. § 2254 petition on the enclosed habeas form or a proper 42 U.S.C. § 1983 complaint on the enclosed civil rights form. Petitioner must clearly state his grounds for relief and whether he is challenging his criminal conviction and sentence,

1 the conditions of his confinement, or the execution of his sentence.

2 **CONCLUSION**

3 1. The Clerk shall send petitioner a blank civil rights complaint and habeas corpus
4 petition.

5 2. The instant petition is **DISMISSED** with leave to amend within **thirty (30) days**
6 from the filing date of this order. Petitioner shall file either a civil rights complaint on the
7 enclosed complaint form OR a first amended petition on the enclosed habeas form as set forth
8 below.

9 If petitioner files an amended petition, it must include the caption and civil case number
10 used in this order (C 08-4082 RMW (PR)) and the words "AMENDED PETITION" on the first
11 page. The amended petition shall be on the court's form for habeas petitions, a copy of which is
12 enclosed with petitioner's copy of this order.

13 Petitioner shall take care to write clearly and legibly, so that the court can read what he
14 writes. He must clearly state the grounds for relief and set out how he has exhausted his claims,
15 that is, what he did to present them first to the highest state court available, which is the Supreme
16 Court of California.

17 3. Petitioner's motion for appointment of counsel is **DENIED** without prejudice
18 (docket no. 4).

19 4. It is petitioner's responsibility to prosecute this case. Petitioner must keep
20 the court informed of any change of address and must comply with the court's orders in a timely
21 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
22 pursuant to Federal Rule of Civil Procedure 41(b).

23 IT IS SO ORDERED.

24 DATED: 9/30/08


RONALD M. WHYTE
United States District Judge